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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,998	01/22/2004	Rebecca M. Minard	49339-C	6201
21874 7590 06/09/2009 EDWARDS ANGELL PALMER & DODGE LLP P.O. BOX 55874 BOSTON, MA 02205				
EXAMINER				
LEVY, NEIL S				
ART UNIT		PAPER NUMBER		
1615				
MAIL DATE		DELIVERY MODE		
06/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/762,998

Applicant(s)

MINARD ET AL.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 128, 130, 132, 135-147, 149-151, 154-165 and 168-183 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 128, 130, 132, 135-147, 149-151, 154-165 and 168-183 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 128, 147, 165, 183 stand, as do independent claims, rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Some of the claims are to **DISTINCT FEED MATERIALS**; it is **STILL** unclear what is intended as the meets & bounds of this constraint. Does it mean, The feed could be a carbohydrate, but not protein also? It is unclear how feed differs from "protein."

Applicant separates feed, from vitamins, minerals;.

Distinct could mean each compartment or section differs from the other(s), Two or more feeds can thus be in each package, or that vitamins are separate from feed – one section having only vitamin, another only feed (which we would interpret to include vitamins, minerals, etc). The claim language should explain/present the desired limitations, in order to eliminate misinterpretation & multiple interpretations.

As it stands, each container may have multiple sections, each containing the same components in more or less the same amounts &/or ratios. At claims 130, 149; one section can contain all components and must meet this claim.

Claims 150, 151 recite corresponding to the specified dog- 147 already requires selection for a specified dog- we fail to see a further limitation.

Again, the unitary package is claimed (128) to contain at least two feed materials weighing within about 5% or less, of an unidentified specified amount. Each package need not contain feed, but two must contain one feed each at claim 128. Examiner interprets within about 5% to be between 4 and 6%, but "about less than 5%" can also be 6%. Claims 128, 147, 165-, 183 are all unclear as to the 5%; claim 165 is unclear each section can contain two ingredients, the total weight within 5%. The language is unclear as to how much the package weighs, how much each section weighs, and how many ingredients are in each section.

Absent any basis claimed for the "unspecified amount," this is seen as a non-patentable consideration, since one could argue the specified amount changes at each preparation and can be 1 gram to 100 pounds at each and every instant of preparing the unitary package. Further, the percent is to the total of the feed materials of the unitary package. Claim 147 has no antecedent basis for "the two"--- there is no b.

Claim Rejections - 35 USC § 103

claims 128, 130, 132, 135-145, 147, 149-151, 154-163, 165, 168-175, 178, 179 stand.

rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1474931 with teaching of MERCK '67.

See page 2-top-foil is used, thus a rigid covering.

claims 128, 130, 132, 135-145, 147, 149-151, 154-163, 165, 168-175, 178, 179 stand rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1474931 with teaching of MERCK '67 in view of MATSOURA- EP 0609056

Claim 128, 130-132, 135-144, 147, 149-151, 154-162, 165, 168-175, 178, 179 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over GB 1474931 with teaching of MERCK '67.

Claim 128, 145, 146, 147, 163, 164, 165, 176, 177 stand rejected under 35 U.S.C. 103(a) as being unpatentable over G B - 1474931 and Magnant et al- 5787839 and Pedigree as a teaching reference, & further in view of Merck '67. Given the recent KSR (2007 supreme court decision in KSR V TELEFLEX @ 82 USPQ 2d @ 1385) determinations to allow for the practitioner in the art to use common sense, and test with expectation of success; it would have been well within the purview of the artisan to prepare a specific diet of a combination of required and desired feed ingredients to feed a specific, selected dog from a daily container of multi-compartmentalized packages..

Claims 128, 130, 132, 135-147, 149-151, 154-165 and 168-183 are rejected under 35 U.S.C. 103(a) as being unpatentable over 21GB in view OF YAMAMOTO et al JP 10014501 and MATSOURA ET AL jp 0609056 in view of DERRIEU et al-6599888.

GB (above) does provide a unitary package, compartmentalized feed for animals. The feed materials are distinct and include vitamins, fat, bran, liver, and protein as heart, in separate sealed packages, of one or more specified amounts of each feed in each package (page 1, lines 70-81). .Two or more distinct edible feed materials-liver, heart, bat, bran, vitamin (page 7, lines 70-81; Figures 1, 2).The liver, and heart constitute protein supplements. Page 2, lines 12-18 show the intent is to meet the feed requirements of individual animals; the instant specified dogs. GB does not identify a particular dog. It would have been obvious to the feeder, that inclusion of a veterinary preparation, and selection of a desired size for each feed

specific animals. MATSOURA show this idea in preparations of prescription diets for cats or dogs [0010] of a specific individual. Feed amounts are specified for the particular animal [0020] and can be given separately or with other feed.

YAMAMOTO feeds cats from a unitary package of 2 or more separate feed materials; feed, or protein-bonita (Figure 1, page 15). The bonita is within 5% of the dry feed [0010]. Other feeds are at [0012]. Pouches are polymeric, flexible, and metallic foil, rigid [0013]. Seven units are disclosed [0014]. Feeds were set for individual cats (See Tables).

DERRIEU is cited to show chondroitin sulfate and glucosamine are known to be administered (column 2, lines 13-25) orally to treat arthritic conditions (column 4, lines 25-36) in dogs (Example). Tablets are prepared, of specific weight (Table 1). It would be obvious to include the dosage DERRIEU of chondroitin sulfate when preparing feed for an arthritic dog. Besides this feed, vitamin C, E and minerals can be added (column 3, lines 42-54).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a container for feed, to use any of art recognized means, as of GB, YAMAMOTO. Motivation to use a specific container is shown by YAMAMOTO, and exact ratios and amounts of feeds are within the purview of one in the art to attain, in order to optimize desired effects, such as control of specific nutritional needs, amount of feed depending on size, age, sex, & desires of the target.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular pet of interest, reduction of toxicity, cost minimization, enhanced, and effects, with consideration of ingredient compatibility.

There is no non obvious and/or unexpected results obtained since the prior art is well aware of the use of feed for control of health and the use of nutrients & amounts thereof for the functionality for which they are known to be used is not a basis for patentability.

Response to Arguments

Applicant's arguments filed 3/23/09 have been fully considered but they are not persuasive. Applicant's arguments are that 35 USC 112 does not require the specificity examiner requests. However, such specificity is seen as overcoming multiple & unintended interpretations of the claim language.

As to the art rejections, applicant argues no one feeds to a specific dog. Examiner finds that to be incorrect, it is left to the feeder to prepare the packages with required amounts for either generic dogs, or specific animals.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/
Primary Examiner, Art Unit 1615

6/8/09